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18 January, 2010

Stewart Seale
The Hills Shire Council
129 Showground Road
Castle Hill NSW 2124

Dear Mr Seale,

RE: PEER REVIEW OF PROPOSED REZONING, CIRCA BUSINESS CENTRE

Hill PDA has been commissioned to independently review an Economic Impact Assessment (EIA) submitted to The Hills Shire Council (Council) in support of a rezoning application. More specifically the rezoning application relates to Lots 3 and 4 (DP 270592) Circa Boulevard, Bella Vista and seeks to rezone the lots to permit an additional 2,500sqm of retail floorspace including a 1,500sqm supermarket and 1,000sqm of specialty retail floorspace.

This independent review has focused on the economic implications of the application, comparing the EIA with Council's Centres Direction adopted in June 2009. To inform this analysis Hill PDA has reviewed the relevant documentation provided by Council, the assumptions and estimates made by the EIA and the likely degree of impact to existing and proposed centres.

The following letter has been prepared as a summary of Hill PDA's findings and conclusions.

BACKGROUND

By way of background, Hill PDA prepared a Retail Floorspace and Demand Analysis in 2008 to support the preparation of the Centre's Direction 2009. Based on detailed supply and demand analysis the Hill PDA study identified the need for significant growth in retail provision in the LGA and the importance of facilitating retail supply to meet the demands of the LGA's population. Council's Centre Direction 2009 subsequently applied a number of the study's recommendations identifying existing and planned / potential roles for centres in the hierarchy or 'network'.

This review has considered the Centres Direction 2009 with particular relevance to the following policies and intentions.

- Key Direction C1: *"In order to protect the Centres Hierarchy and the economic viability of centres, all new development proposals should support the centres hierarchy, with major development applications subject to detailed Economic Impact Assessments"* (Page 54)

- Key Direction C1.1.2 Reinforce the centres hierarchy in decision making
- Key Direction C1.1.3 Ensure the development of centres reflects the centres typology
- Key Direction C.1.2.2(e) Consider the future transitioning of Norwest Marketown and Winston Hills centres to higher order centres in the assessment of development applications
- Key Direction C.1.2.3(b) Encourage development that supports the transition of Windsor Road, Kellyville and Rouse Hill Major Centre
- Key Direction C.4.1.2 (a) Prepare a master plan and site specific development controls for Windsor Road, Kellyville Village (completion due June 2011)
- Key Direction C.4.1.2 (b) Work with all sections of Council and the RTA to develop an integrated approach to the

Page 38 of the Centres Direction states that an EIA submitted with an application that is contrary to policy *"should show that there is sufficient demand for the proposal without compromising the ability of other existing or proposed centres to fulfil their roles in the hierarchy."* Of relevance to this requirement is the Land and Environment Court (LEC) Judgment *Kentucky Fried Chicken Pty Ltd v Gantidis (1979)* 140 CLR 675 at 687. In this judgement Justice Stephen noted that:

"if the shopping facilities presently enjoyed by a community or planned for it in the future are put in jeopardy by some proposed development, whether that jeopardy be due to physical or financial causes, and if the resultant community detriment will not be made good by the proposed development itself, that appears to me to be a consideration proper to be taken into account as a matter of town planning... However, the mere threat of competition to existing businesses if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration."

Another relevant LEC judgement is Fabcot Pty Ltd v Hawkesbury City Council (97) LGERA whereby Justice Lloyd noted that *"economic competition between individual trade competitors is not an environmental or planning consideration to which the economic effect described in s 90(1)(d) is directed. The Trade Practices Act 1974 (Cth) and the Fair Trading Act 1987 (NSW) are the appropriate vehicles for regulating competition. Neither the Council nor this Court is concerned with the mere threat of economic competition between competing business.... It seems to me that the only relevance of the economic impact of a development is its effect 'in the locality'...".*

Considering these factors, the LEC has stated that Councils should not be concerned about competition between individual stores as this is a matter of fair trading. But they should concern themselves with impact on established retail centres. The impact on competing stores and businesses is only relevant if the viability of those businesses are threatened and the viability of a retail centre as a whole is threatened due to a demonstrated nexus between the competitive stores and the other retailers within the retail centre.

Considering these factors, the following section of this letter provides commentary and a response to the EIA submitted for rezoning.

CIRCA BUSINESS CENTRE, BELLA VISTA EIA

The planning proposal seeks the rezoning of Lots 3 and 4 (the subject site) within the Circa Business Centre to allow for the provision of 2,500sqm of retail floorspace. The adjacent Lot 2 was rezoned by Council in 2007 to allow for a maximum of 3,890sqm of retail floorspace. The site is located within the Norwest Business Park and has direct connection to Old Windsor Road. For the purposes of this assessment we have presumed that (despite the road located between Lot 2 and Lots 3 and 4) the centre will be designed so that it is coherent and acts as one centre.

The rezoning application was submitted by FKP and accompanied by an EIA (prepared by Urbis) in accordance with the requirements of the Centres Direction. We have reviewed the FKP submission and the Urbis EIA.

As cited by FKP, the development principles for the site are to *"to incorporate a range of convenience retail and ancillary support uses serving the needs of employees"* (FKP Submission page 16). We agree that a successful business park should have a range of services and facilities including a supermarket. Should however the rezoning application be permitted, combined the two lots would provide close to 6,400sqm of supermarket and specialty retail floorspace. Together with the existing Norwest Marketown (8,500sqm) close to 15,000sqm of retail floorspace would be provided, representing the equivalent floorspace of two village centres, within the business park.

The EIA prepared by Urbis recognises that the proposed centre would not only serve the needs of the Norwest Business Park employees but also the residents of the defined primary and secondary trade areas. In fact the EIA's numerical analysis is entirely based on residential expenditure and demand and does not attempt to quantify the level of demand required for supermarket floorspace by existing and future local workers or visitors.

The defined trade area is broad and includes the BRRA and its forecast growth in demand for retail floorspace. The Urbis EIA does not however assess the commensurate level of existing and planned retail provision in this area including:

1. the approved expansion of Norwest Marketown in addition to its potential growth to a town centre;
2. the proposed ALDI supermarket in the Wrights Road, Kellyville Centre;
3. the planned growth of the Windsor Road Centre to a village (potentially including a main line supermarket); and
4. the existing neighbourhood centre in Bella Vista Drive.

Whilst out of the defined trade area, the EIA also fails to acknowledge the potential expansion of Castle Towers by 50,000sqm. As a small matter, we also believe that the location of the centre, as shown on Figure 1, is in error and should be shown further south in greater proximity to Old Windsor Road. Accordingly the concentric circle should also be moved south on the figure.

The EIA recognises the legal precedent set by Fabcot Pty Ltd citing that *"economic trade and competition between individual retailers was not a relevant planning consideration as this is a matter of fair trading. If however, a proposed development is found to detract from the current or planned centre then it is a matter for consideration"*. Of particular relevance to the matter is the importance of assessing the impact to the <u>current or planned centre</u>. Page 17 of the Urbis EIA goes on to state that *"the relevant consideration in planning terms relates to the ongoing ability of centres to continue* *to provide for the needs of the community for which they serve, and to ensure that new development does not fundamentally undermine the viability and role of existing and planned centres".*

The Urbis EIA undertakes a review of the potential economic impact of the proposed centre to existing centres in the area of likely influence. This area of influence is wide, therefore diluting the impact of trade draw from existing centres. The impact assessment is undertaken for major centres and centres with supermarkets however importantly the assessment does not include proposed expansions or the Centre Direction's planning intentions for centre growth despite the recognition of the need to assess impact to *the viability and role of existing and planned centres*.

By way of example the impact assessment fails to take account of the proposed expansion of Norwest Marketown and Council's intentions for its growth to a Town Centre[1] or Councils intentions for the Windsor Road Centre, Kellyville to grow to a village. These centres are located within the same expenditure pool as the proposed centre and therefore it follows that any EIA should assess the potential impact to the realisation of their growth by the provision of unplanned retail space.

Our review of the impact assessment on existing centres queries the amount of trade drawn from some of the key centres. Table 7 of the Urbis EIA shows that upon operation $4.2m of expenditure will be drawn from supermarket based centres within the Castle Hill Major Centre despite the fact that these supermarkets are not located within the main trade area. We also query why the table shows a significantly greater share of trade to be drawn from Castle Hill Major Centre (-$4.2m) than Norwest Marketown (-$1.8m) given that Norwest Marketown is located significantly closer (approximately 2.5km by road) from the subject site.

Furthermore the Urbis EIA estimates that one third of all trade draw will come from other centres. This figure is comparatively high and will vary depending on the nature of the end retailer. Should however the tenant be a supermarket such as ALDI, we note Urbis' justification for this is the unique location of the subject site within a major employment centre and hence the likelihood that workers will shop there as opposed to alternative centres located in close proximity to their homes (that are presumably located outside of the main trade area).

Our assessment of the turnover rate used by Urbis to calculate the impact assessment is that it is comparatively high. As a result the level of forecast turnover for the centre is greater than it would be if a lower turnover rate had been used and therefore the need to draw trade from existing centres. Notwithstanding the discussion provided in the preceding paragraphs, given the use of a high turnover rate in addition to the fact that no expenditure has been included from existing and prospective workers in the business park, we believe that the proposal is not likely to have a significant adverse impact on existing supermarket based centres.

An important matter is that the impact assessment only assesses impact to centres with supermarkets. The Urbis EIA in fact states that *"there is limited small supermarket shopping opportunities within the trade area and there is insufficient provision of specialty retailers in the southern portion of Norwest Business Park to meet needs of the local working and residential community"* (Page 14). What the EIA fails to consider however is the existing neighbourhood centre at Bella

[1] Centres Direction page 34

Vista, which is within the primary trade area and provides specialty retail. The Centres Direction 2009 recognises this centre as experiencing economic challenges (Page 48). Given the proximity and fragility of the Bella Vista neighbourhood centre to the subject site, we believe it should be included in any economic impact assessment.

As a final point, Table 8 (page 19) of the EIA reviews the forecast growth in expenditure in the primary trade area and the level of supermarket floorspace that could be supported. It shows that should the supermarket be approved and constructed, as of 2011 there will be an oversupply of supermarket floorspace in the main trade area. By 2013 demand will have grown to meet supply and by 2016 there will be demand for an additional 685sqm of supermarket floorspace.

Based on the discussion provided in Section 4 of the Urbis EIA, we have made the assumption that all of the noted centres and their existing supermarket supply has been included in the calculation. We have also presumed however that proposed supermarkets (such as the ALDI proposed for Wrights Road, Kellyville and Council's intentions for a supermarket at Windsor Road, Kellyville) have not been included. It is difficult however to confirm this as footnote 1 for the table has not been completed.

Based on the above assumptions, given that the main trade area includes the BRRA, this assessment raises some major concerns regarding the cumulative impact of this proposal with others. The conclusion that only 685sqm of additional floorspace is required in the main trade area by 2016 would mean that there is insufficient expenditure for another medium to large supermarket within the BRRA. What is more it raises concerns regarding the potential cumulative impact to centres such as Windsor Road, Kellyville and objectives for it to grow to a village centre with a main line supermarket.

Notwithstanding this concern and the shortcomings identified in this letter, in light of:

- the modest scale of the rezoning proposal (2,500sqm) and the fact that it does not propose a main line supermarket (and at most would facilitate an ALDI store);
- the nature of the approved DA at Norwest Marketown; and
- the additional demand generated by local workers and the hospital have not been factored into the assessment;

we believe the planning proposal is not likely to create a significant economic impact to existing or planned centres. The possible exception being the Bella Vista neighbourhood centre. To test this presumption and to give Council sufficient comfort however, we recommend the deficiencies of the Urbis EIA identified in this letter be addressed.

CONCLUSION

In summary, we support the Urbis EIA's position that economic impact should be assessed in relation to the viability and role of existing and planned centres. Whilst the EIA did assess the potential economic impact of the proposal to existing centres, it fell short of assessing the proposed and / or approved expansion of centres in accordance with the Centre Direction 2009. Of particular note is the failure of the Urbis EIA to asses the proposals impact to the economic function of the Bella Vista neighbourhood centre and Key Directions C.1.2.2(e) and C.1.2.3(b). As a final matter of consideration, the proposal should also include an assessment of the cumulative impact of other known proposals in the locality, particularly those that seek to draw on the same pool of expenditure. These matters are important considerations as the proposed rezoning, in combination with the existing retail floorspace provision in Circa Business Centre, will form a centre commensurate with the scale of a 'Village' within The Hills Shire's centre hierarchy.

I trust that this letter has provided some clarification and would welcome the opportunity to provide any further advice or information should it be required.

Yours Faithfully,

Sarah Hill

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